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No. 99-5739

IN THE
SUPREME COURT OF THE UNITED STATES

DEWEY JONES

Petitioner,

v.

UNITED STATES

Respondent.

On Writ of Certiorari to the
Seventh Circuit Court of Appeals

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Dewey Jones was convicted of the federal crime of burning down a building that was "in" or "affected" interstate commerce. The building Jones burned was his cousin's private residence.

In light of *United States v. Lopez*, 514 U.S. 549 (1995), and the interpretive rule that constitutionally doubtful constructions should be avoided, does 18 U.S.C. § 844(i) apply to arson of this private residence, and if so, is its application to the private residence in this case constitutional?

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INTEREST OF THE *AMICUS*[1]

The Center for the Original Intent of the Constitution was formed by the Home School Legal Defense Association in 1998, and now operates under the auspices of Patrick Henry College. The Center holds that the interpretation of the Constitution according to the original intent of the founders is the only safe basis for the preservation of limited government and all rights including those important to our association. The Center exists to systematically research and advocate constitutional interpretation according to the principle of original intent.

In our briefs to date, we have argued that principles of *dual sovereignty*, implicit in the structure of the Constitution, limit the powers of Congress over States. In our brief in *United States v. Morrison*, Nos. 99-5 and 99-29 (S. Ct., oral arguments scheduled for Jan. 11, 2000), we explained how the Founders' notion of "separate incompetence" limits the power of Congress over private intrastate activity. In this brief, we bring together the complementary strands of "dual sovereignty" and "separate incompetence" in an effort to return to the *strong* yet *limited* federal government our Founders established.

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[1] Pursuant to Rule 37.6, this brief was authored, prepared, and paid for in its entirety by the Center for the Original Intent of the Constitution at Patrick Henry College and the Home School Legal Defense Association. No counsel for a party authored any part of this brief, nor did any person or entity other than *amicus curiae*, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

The amicus curiae requested and received the written consents of the parties to the filing of this brief. Such written consents, in the form of letters from counsel of record for the parties, have been submitted for filing to the Clerk of Court. See Sup. Ct. Rule No. 37.3(a).

Our Founders established a federal government with limited and enumerated powers. The limits on federal power were originally intended to protect the autonomy of the States and the liberties of the people. The Founders viewed vigorous State governments and limited federal government as essential to personal liberty. So do we.

Our interest is to preserve the blessings of liberty for ourselves and our posterity. U.S. Const. Preamble. We seek to do this by holding the federal government to the terms of our original social contract: the Constitution. Faithful adherence to the original intent of the Founders is essential; not because they are ancient and deserve veneration, but because they were the elected representatives of the people.

Self-government demands that the intention of the elected Framers should always prevail over the views of unelected judges guided by floating notions of a "living Constitution." Our Founders made promises to the people that ratified the Constitution. Those promises are what are ultimately at stake in this case.

SUMMARY OF ARGUMENT

Dewey Jones was convicted of throwing a Molotov cocktail into his cousin's living room. This is non-commercial activity that our Founders expected the States to punish. Yet he was convicted of violating a federal statute that makes it a crime to burn down a building that is "in" or "affecting" interstate commerce. 18 U.S.C. 844(i).

The Commerce Clause has been a slippery slope since the New Deal, but this statute is extraordinary. The legislative history of the Organized Crime Control Act of 1970 indicates that Congress intended to push its power all the way out to the farthest fringes. *See, e.g., Russell v. United States*, 471 U.S. 858, 860-62 (1985) (§ 844(i) was intended to have the "fullest jurisdictional breadth constitutionally permissible under the Commerce Clause"). In the initial draft of this legislation, federal jurisdiction was limited to buildings used for business purposes, but the Committee changed that in order to reach as far as they could. *Russell*, 471 U.S. at 862. They did not determine that they had constitutional authority to do so. They just made up their minds to go as far as the Constitution allows.

Congress wanted the Department of Justice to have the broadest possible power to combat organized crime, but the executive branch has used that power to prosecute common criminals like Dewey Jones. If the commerce power is a slippery slope, then the legislative and executive branches of the federal government are a bobsled team. This Court must decide whether to pile on or to apply the brakes.

Overly broad legislation and indiscriminate prosecution have combined to place this case before this Court. If neither of the other federal branches have any sense of restraint, this Court must restrain them. The choices before the Court are few. It can abandon any meaningful notion of limited government by upholding this conviction. It can strike down the federal arson act—and many other federal criminal statutes with a jurisdictional component—as unconstitutionally vague. Or it can establish some test to decide which buildings "affect" interstate commerce and which do not, and decide this case accordingly.

We urge this Court to spell out a judicially manageable standard that is true to the text and purpose of Article I. That is a difficult task, yet we believe that such a standard exists. A "separate incompetence" standard can be found in the journals of the Constitutional Convention. We urge this Court to adopt this standard, apply it, and reverse this conviction.

Separate incompetence is the logic that dictated the language of the Constitution. Our entire system of dual sovereignty assumes that Congress and the States have distinct spheres of operation, and that those spheres seldom intersect. The very structure of our federalism presupposes that there is a boundary between the separated powers. The "separate incompetence" standard makes it easier to determine what those boundaries really are.

This Court's interpretation of "interstate commerce," since the New Deal, eliminates any real boundary between State and federal jurisdiction. That is wrong. When Chief Justice Marshall decided *Gibbons v. Ogden*, 22 U.S. 1 (1824), he articulated a clear distinction between State and federal power over commerce. He said:

> The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government.

Gibbons, 22 U.S. 1, 195, 6 L.Ed. 23, 70 (1824).

Dewey Jones firebombed his cousin's living room. We think that was evil: but it does not affect the States generally, nor does it affect any other State, nor is it necessary to interfere with Indiana's criminal justice system in order to execute the general powers of the federal government. Under the separate incompetence standard articulated by Chief Justice Marshall in *Gibbons*, this conviction should be reversed.

ARGUMENT

I.

OUR FOUNDERS ONLY INTENDED TO GIVE CONGRESS POWER TO DO WHAT THE STATES WERE SEPARATELY INCOMPETENT TO DO

A. THE CONSTITUTIONAL CONVENTION SPELLED OUT THE SCOPE OF ALL LEGISLATIVE POWER

The Framers of our Constitution did not intend to intrude upon the authority of the States, not did they intend to pit two sovereigns against each other in every field of human

endeavor. They intended to *split* the atom of sovereignty. They wanted Congress to do what the States could not do on their own, and they wanted Congress to *not* do what the States *could* do. The proof of this can be found in the records of the Constitutional Convention.

Before our Founders ever enumerated the powers in Article I, § 8, they first agreed upon the proper scope of federal legislative power. They wanted Congress to be able to legislate wherever the States were *separately incompetent* to do so. They therefore resolved to give Congress power:

> [T]o legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

1 Madison, James, Journal of the Federal Convention 362 (2d ed. 1893) [hereinafter "Madison's Journal"].

Once they had agreed to this "separately incompetent" standard, our Founders had little difficulty choosing between the infinite number of possible powers of Congress. They knew what they wanted: Congress should be able to do what the States, separately, cannot; and Congress should *not* be able to do what the States, separately, can do. They reduced the principle to a list of enumerated powers, and later closed off that list with the Tenth Amendment.

B. THE STATES ARE "SEPARATELY COMPETENT" TO PROTECT PRIVATE PROPERTY

If Congress had not asserted virtually infinite power in this and similar criminal statutes with a jurisdictional element, and if the Executive branch had not used that power to prosecute ordinary intrastate crimes, we might not need to dust off the "separate incompetence" standard. After all, the enumerated powers in Article I, § 8 were intended to spell out what Congress can and cannot do without reference to the underlying reasoning of the Framers. But the other two branches of the federal government seem to have abandoned any notion of enumerated powers, and this Court must reassert some constitutional limits. In this section, we suggest how to do that.

The "separate incompetence" standard sets reasonable limits on *all* the Article I powers in light of the historically verifiable purposes of our Founders. Federal courts would do well to consider each clause of the original resolution defining legislative power within the Constitutional Convention, which gave Congress power to legislate in cases:

1. where the States are severally incompetent;

2. where the harmony of the United States may be interrupted by individual State legislation; and

3. in all cases for the general interests of the Union.

Federal legislation is appropriate in the first sense when the States cannot accomplish the goal individually. This is the purest sense of "separate incompetence." If individual States cannot do the job, our Founders wanted Congress to have the power they lacked. If the States were simply unable

to punish arson, federal arson legislation might be necessary. The States *are* able to punish arson, however, so this statute is not appropriate in this sense.

Federal legislation is also appropriate when the "harmony of the United States" would be "interrupted by the exercise of individual legislation." This is the case where individual States can deal with the problem, but their multiple solutions would create a whole new set of problems. (Preemption law deals with this situation.) If Dewey Jones had burned down an airport or other building in a field completely preempted by federal legislation, federal arson prosecution would have been appropriate. But he did not.

Finally, legislation may be appropriate if it advances the "general interests of the Union." This third strand of "separate incompetence" deserves close scrutiny. It was initially proposed by Gunning Bedford, Jr., of Delaware, midway through the Constitutional Convention. Edmund Randolph, Governor of Virginia and chief sponsor of the original "separate incompetence" language, was troubled by Bedford's proposal.

> Mr. RANDOLPH. This is a formidable idea, indeed. It involves the power of violating all the laws and Constitutions of the States, and of intermeddling with their police. The last member of the sentence [regarding interrupted harmony] is also superfluous, being included in the first [regarding general interests].
>
> Mr. BEDFORD. It is not more extensive or formidable than the clause as it stands: no State being separately competent to legislate for the general interest of the Union.

1 Madison's Journal, *supra*, 362.

Bedford's language carried, over Randolph's objections, and it was this modified vision of legislative power that the Committee of the Whole referred to a Committee of Detail, on July 26th. 1 Elliot, Jonathan, Debates on the Federal Convention 221 (2d ed. 1863). Randolph was on that Committee, which promptly converted that broad resolution into the specific list of enumerated powers found in Article I, § 8.

Bedford never objected to the replacement of his wording with a specific list of enumerated powers, presumably because the list accomplished all that Bedford had intended. Neither Bedford nor any other Founder intended the Commerce Clause to become a "sweeping clause" that could abolish all the barriers of federalism. Bedford's signature on the finished Constitution indicates his satisfaction with the enumerated powers. They covered everything Bedford thought that the States were not "separately competent" to do.

Since the New Deal, Congress has repeatedly done just what Randolph feared it might do. As we shall show in our second argument, that is a real problem. A general federal arson statute upsets the balance of State and federal power, and reduces, rather than enhances freedom of property. If the "general interests of the Union" means whatever a majority of Congress thinks it means, then we have an unlimited, rather than a limited, federal government. But this Court, early on, spelled out a clearer and better definition of the "general interests of the Union."

C. Commerce and Separate Incompetence

The first great case on Commerce was *Gibbons v. Ogden*, 22 U.S. 1, 6 L.Ed. 23 (1824), where this Court struck down a

New York law granting a monopoly over steamship travel to Robert R. Livingston and the inventor of the steamboat, Robert Fulton. Chief Justice Marshall ruled that Congress did not just have power to regulate commerce between the States: it had *exclusive* power to do so.

The winning attorney in *Gibbons* was Daniel Webster, who explained the state of navigation in the waters surrounding New York City in 1824:

> By the law of New-York, no one can navigate the bay of New-York, the North River, the Sound, the lakes, or any of the waters of that State, by steam vessels, without a license from the grantees of New-York, under penalty of forfeiture of the vessel.
>
> By the law of the neighbouring State of Connecticut, no one can enter her waters with a steam vessel having such license.
>
> By the law of New-Jersey, if any citizen of that State shall be restrained, under the New-York law, from using steam boats between the ancient shores of New-Jersey and New-York, he shall be entitled to an action for damages, in New-Jersey, with treble costs against the party who thus restrains or impedes him under the law of New-York! This act of New-Jersey is called an act of retortion against the illegal and oppressive legislation of New-York; and seems to be defended on those grounds of public law which justify reprisals between independent States.

> It would hardly be contended, that all these acts were consistent with the laws and constitution of the United States. If there were no power in the general government, to control this extreme belligerent legislation of the States, the powers of the government were essentially deficient, in a most important and interesting particular…

Gibbons, 6 L.Ed., at 24 (Daniel Webster, for the Plaintiff).

Webster knew how broadly the term "commerce" could be construed, but he interpreted the word in light of the obvious intentions of the Founders. Webster said:

> It was in vain to look for a precise and exact definition of the powers of Congress, on several subjects. The constitution did not undertake the task of making such exact definitions. In conferring powers, it proceeded in the way of enumeration, stating the powers conferred, one after another, in few words; and, where the power was general, or complex in its nature, the extent of the grant must necessarily be judged of, and limited, by its object, and by the nature of the power.
>
> Few things were better known, than the immediate causes which led to the adoption of the present constitution; and he thought nothing clearer, than that the prevailing motive was to regulate commerce; to rescue it from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law. The great

objects were commerce and revenue; and they were objects indissolubly connected. By the confederation, divers restrictions had been imposed on the States; but these had not been found sufficient. No State, it was true, could send or receive an embassy; nor make any treaty; nor enter into any compact with another State, or with a foreign power; nor lay duties, interfering with treaties which had been entered into by Congress. But all these were found to be far short of what the actual condition of the country required. The States could still, each for itself, regulate commerce, and the consequence was, a perpetual jarring and hostility of commercial regulation.

In the history of the times, it was accordingly found, that the great topic, urged on all occasions, as showing the necessity of a new and different government, was the state of trade and commerce. To benefit and improve these, was a great object in itself: and it became greater when it was regarded as the only means of enabling the country to pay the public debt, and to do justice to those who had most effectually laboured for its independence. The leading state papers of the time are full of this topic. The New-Jersey resolutions complain, that the regulation of trade was in the power of the several States, within their separate jurisdiction, in such a degree as to involve many difficulties and embarrassments; and they express an earnest opinion, that the sole and exclusive power of regulating trade with foreign States, ought to be in Congress. Mr. Witherspoon's motion in Con-

gress, in 1781, is of the same general character; and the report of a committee of that body, in 1785, is still more emphatic. It declares that Congress ought to possess the sole and exclusive power of regulating trade, as well with foreign nations, as between the States. The resolutions of Virginia, in January, 1786, which were the immediate cause of the convention, put forth this same great object. Indeed, it is the only object stated in those resolutions. There is not another idea in the whole document. The entire purpose for which the delegates assembled at Annapolis, was to devise means for the uniform regulation of trade. They found no means, but in a general government; and they recommended a convention to accomplish that purpose. Over whatever other interests of the country this government may diffuse its benefits, and its blessings, it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce; and, for its immediate object, the relief of those necessities, by removing their causes, and by establishing a uniform and steady system. It would be easy to show, by reference to the discussions in the several State conventions, the prevalence of the same general topics; and if any one would look to the proceedings of several of the States, especially to those of Massachusetts and New-York, he would see, very plainly, by the recorded lists of votes, that wherever this commercial necessity was most strongly felt, there the proposed new constitution had most friends. In the New-York convention, the argument arising

> from this consideration was strongly pressed, by the distinguished person [Robert R. Livingston] whose name is connected with the present question [Livingston was half owner of the steamboat monopoly].

Gibbons, 6 L.Ed. at 25-26 (Daniel Webster, for the Plaintiff).

D. THE LIMITS OF COMMERCE POWER

Webster brought his argument back to the fundamental principles of federalism. He did not argue for an expansion of federal power at State expense. He called, instead, for a structural balance between State and federal governments that we label "separate incompetence" and that this Court has since upheld under the heading of "dual sovereignty." Webster argued:

> It is the true wisdom of these governments to keep their action as distinct as possible. The general government should not seek to operate where the States can operate with more advantage to the community; nor should the States encroach on ground, which the public good, as well as the constitution, refers to the exclusive control of Congress.

Gibbons, 6 L.Ed. at 15 (Daniel Webster, for the Plaintiff).

Webster won his case. Chief Justice John Marshall struck down the New York monopoly, ruling that Congress's power to regulate interstate commerce was an *exclusive* power.

Marshall refused to construe the term "commerce" so narrowly as to exclude steamboat travel. We believe Marshall was right. Today, however, Congress construes "commerce" so broadly that it includes arson. Did Chief Justice Marshall step onto a slippery slope, which led inevitably to this result? Or did he envision limits to the powers he enlarged?

Marshall did not just envision limits, he stated them. Marshall's words in *Gibbons* provide the soundest available test for the true scope of congressional power. He wrote:

> The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

Gibbons, 22 U.S. at 195, 6 L.Ed. at 70.

Gibbons is a perfect application of "separate incompetence" to a specific question about commerce. In a single case, it aptly expresses the "genius and character of the whole government." Marshall, here, put into words what Gunning Bedford, Jr., meant when he said "[N]o state [is] separately competent to legislate for the general interest of the Union." 1 Madison's Journal, *supra*, 362, and he has done so in a way that would satisfy Edmund Randolph.

Marshall offers a judicially manageable test that is true to the text and purpose of the Constitution. If this Court applies it here, this conviction will be reversed. Dewey Jones' act of

arson was an internal concern to the State of Indiana. It did not affect the States generally, nor did it affect another State. The federal government, in executing its general powers, had no need to interfere with Indiana's own criminal justice system in this case. On the contrary: the protection of private property within Indiana by Indiana's own criminal justice system is a matter properly reserved to Indiana itself.

ARGUMENT

II.

THIS CONVICTION MUST BE OVERTURNED BECAUSE FEDERAL PROSECUTION OF COMMON CRIMES THREATENS OUR SYSTEM OF DUAL SOVEREIGNTY

Vigorous State government cannot survive federal usurpation of its core functions. If the States were merely quaint reminders of our colonial heritage, the conviction of Dewey Jones might be upheld, but they are not. The States are a vital part of the structure of American liberty, and federalization of crimes against property threatens an essential freedom. This Court must reverse this conviction.

A. STRUCTURAL GUARANTEES OF FREEDOM

We the people wrote and ratified our own Constitution in order to form a more perfect union; and the purpose of that union was to secure the blessings of liberty to ourselves and our posterity. U.S. Const. Preamble. Autonomous States are an essential component of that liberty, as this Court has repeatedly insisted:

> In recent years, perhaps, we have come to think of liberty as defined by that word in the Fifth and Fourteenth Amendments and as illuminated by the other provisions of the Bill of Rights. The conception of liberty embraced by the Framers was not so confined. They used the principles of separation of powers and federalism to secure liberty in the fundamental political sense of the term, quite in addition to the idea of freedom from intrusive governmental acts.

Clinton v. New York, 524 U.S. 417, 451 (1998) (Kennedy, J., *concurring*).

> This separation of the two spheres is one of the Constitution's structural protections of liberty. Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

Printz v. United States, 521 U.S. 898, 921 (1997).

Or, to quote Madison:

> In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

The Federalist No. 51, at 323 (J. Madison) (J. Hamilton ed. 1869).

B. THE CHALLENGE OF DUAL SOVEREIGNTY

This Court has used the term "dual sovereignty" to describe the relationship between State and federal governments. Each citizen is subject to two governments, but neither of those governments is subject to the other. Instead, ideally, each government operates in its own well-defined field with a minimum of overlap or interference.

The problem with dual sovereignty is that it has a potential for conflict—or even tyranny. The Founders knew they were *reducing* State autonomy when they gave Congress the power to govern citizens directly, without relying on the intermediary of State governments. Alexander Hamilton begins Federalist No. 17 by confronting this problem:

> AN OBJECTION of a nature different from that which has been stated and answered in my last address may perhaps be likewise urged against the principle of legislation for the individual citizens of America. It may be said that it would tend to render the government of the Union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave with the States for local purposes.

The Federalist No. 17, at 156 (A. Hamilton) (J. Hamilton ed. 1869).

This *amicus* believes that the federal government has, in fact, become so powerful as to "absorb" the authority of the State and local governments. At the time, however, Hamilton found this fear far-fetched. He wrote:

> Allowing the utmost latitude to the love of power which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government could ever feel to divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition.... The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.

The Federalist No. 17, at 156.

Hamilton did not foresee the Organized Crime Control Act of 1970, 84 Stat. 922. Although he believed Congress would never really want to intrude upon domestic police powers, he was willing to assume, for the sake of the argument, that it might happen. He wrote:

> But let it be admitted, for argument's sake, that mere wantonness and lust of domination would be sufficient to beget that disposition;

still it may be safely affirmed that the sense of the constituent body of the national representatives, or, in other words, the people of the several States, would control the indulgence of so extravagant an appetite. It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities. The proof of this proposition turns upon the greater degree of influence which the State governments, if they administer their affairs with uprightness and prudence, will generally possess over the people....

> There is *one transcendent advantage* belonging to the province of the State governments, which alone suffices to place the matter in a clear and satisfactory light—I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is this which, being the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake, contributes more than any other circumstance to impressing upon the minds of the people *affection, esteem, and reverence* towards the government.

The Federalist No. 17, at 156-57 [*emphasis supplied*].

Convicting Dewey Jones of a federal crime undermines the people's loyalty to the government of their own States. See U.S. Const. Art. IV, § 4. Federal prosecution of a garden-variety crime like this one deprives the States of their "one transcendent advantage." It lessens the "affection, esteem, and reverence" that citizens should feel for a competent State government. If the States matter at all, then this case matters.

C. FREEDOM THROUGH FEDERALISM

The States do matter. They matter in too many ways to enumerate here, but since this is an arson case, and arson is a crime against property, we will simply show how State autonomy enhances property rights.

Each State protects, regulates, and taxes property in its own way. Americans are free to choose between fifty different "package deals." If their State inadequately protects property, or burdens it with too much regulation, or eats it up through excessive taxation, citizens can try to change the laws—or they can change States by picking up and moving.

The "separate incompetence" standard enhances property rights. If a State is actually unable to protect property, reasonable property owners in that State would want federal protection. But if the States can do the job on their own, property owners would rather retain their freedom of choice. The theoretical maximum protection of property rights would occur in a system where the federal government protected *only* those rights that demand nationwide protection (as bankruptcy, patent, and copyright laws do), and left all other property rights to a wide variety of State laws. (The State laws might need to be constrained by some additional protections, like the Contracts Clause and the Fourteenth Amendment.)

We do not suggest that this Court should return to the discredited practice of striking down Acts of Congress on the basis of economic theory. *See, e.g., Lochner v. New York*, 198 U.S. 45 (1905). We think, instead, that the Court should interpret the text of the Constitution so as to fulfill the purposes of those who wrote it, especially when economic theory confirms the true genius of that original intent.

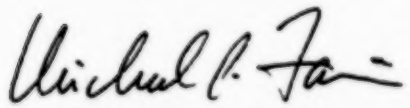
The conviction of Dewey Jones takes away the freedom of property that dual sovereignty provides. It perverts the text of the Constitution and frustrates the purposes of those who chose that text. This conviction should therefore be reversed.

CONCLUSION

Our Founders split the atom of sovereignty, creating a whole new kind of government that divided power in order to serve the people. If we hope to be true to our Founders' vision, this conviction must be reversed. Dewey Jones should be in jail, but he should be in an Indiana jail for breaking Indiana law, not in a federal prison for the legal fiction of an assault on "interstate commerce."

Our Founders intended Congress to act where the States were separately incompetent to do so, and to refrain from acting otherwise. In this case, Congress refused to refrain, and the Department of Justice has only made things worse. If Article I power is to be limited at all, therefore, this Court must limit it. Ideally, that limit should be true to the text and purpose of the Constitution, and should be something that judges can reasonably apply. Chief Justice Marshall spelled out exactly such a standard in *Gibbons*. This Court should apply that standard in this case and reverse this conviction.

Respectfully Submitted,



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